Supreme Court, U. S.
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76-138

IN THE

Supreme Court of the United States

October Term, 1976

NELLIE T. GOFF, Petitioner

v.

CASPAR WEINBERGER, Secretary of Health Education and Welfare, Respondent

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	1
Questions presented for review	1
Statutes and regulations involved	1
Statement	2
Reasons for granting the Writ	5
a. The Court has decided a federal question which conflicts with another Court of Appeals.	5
b. The Court of Appeals has decided an important question of federal law which has not been, but should be, decided by this Court	7
Conclusion	8

AUTHORITIES CITED

	Page
Cases:	
Dvorak v. Celebrezze, 345 Fed 2d 894 (10 Cir. 1965) .	7
Haberman v. Finch, 418 Fed 2d 664 (2 Cir. 1969)	7
Roy v. Gardner, 387 Fed 2d 162 (4 Cir. 1967)	6
Rasmussen v. Gardner, 374 Fed 2d 589 (Cir. 1967) ..	7
Tuck v. Finch, 430 Fed 2d 175 (4 Cir. 1970)	5, 6
Statutes:	**Appendix**
5 USC 556 (c) (8)	1g
42 USC 402 (d)	2g
42 USC 402 (g)	3g
42 USC 402 (i)	3g
42 USC 405 (a)	14g
42 USC 405 (c) (5) (a)	15g
42 USC 405 (g)	15g
Regulations:	
20 CFR 404.601 (b)	16g
20 CFR 404.601 (c)	17g
20 CFR 404.601 (d)	18g
20 CFR 404.601 (e)	19g
20 CFR 404.613	20g

OPINION BELOW

United States Court of Appeals below without opinion affirmed the judgment (appendix pg. 1a) of the District Court (appendix pg. 1b), both decisions are not reported.

JURISDICTION

The judgment of the Court below (appendix pg. 1a) was entered on May 4, 1976. Rehearing was not sought. The jurisdiction of the Court is envoked under 28 U.S.C. Sect. 1254 (1).

QUESTIONS PRESENTED FOR REVIEW

1. Whether the sworn affidavit of the Petitioner's attorney and the Petitioner's testimony are substantial evidence that the Petitioner was entitled to survivor's insurance benefits under the Social Security Act retroactive to March 31, 1959.

2. Whether the oral inquiry by the Petitioner's attorney on the Petitioner's behalf in 1959 concerning entitlement to survivor's insurance benefits constituted an intent to claim survivor's insurance benefits under the Social Security Act.

3. Did the court below err in not holding that the requirement of a written statement of intent to claim survivor's insurance benefits under the Social Security Act had been validly waived by the Administrative Law Judge.

STATUTES AND REGULATIONS INVOLVED

The Statutes involved are: 5 U.S.C. 556 (c) (8); 42 U.S.C. 402 (d); 42 U.S.C. 402 (g); 42 U.S.C. 402 (i); 42 U.S.C. 405 (a); 42 U.S.C. 405 (c) (5) (a) 42 U.S.C. 405 (g). Because these provisions are lengthy, their pertinent text is set forth in appendix pg. 1g - 15g.

The Regulations involved are Social Security Regulations: 20 C.F.R. 404.601 (b); 20 C.F.R. 404.601 (c); 20 C.F.R. 404.601

(d) 20 C.F.R. 404.601 (e); 20 C.F.R. 404.613. Because these provisions are lengthy, their pertinent text is set forth in appendix pg. 20g.

STATEMENT

This is an action under Section 205 (g) of the Social Security Act, as amended 42 U.S.C. 405 (g) to review a final decision of the Secretary of Health, Education and Welfare denying surviving child's insurance benefits to James Woolley, Patricia Woolley and Jane (Woolley) Turgeon retroactive to March 1959 and mother's insurance benefits to Nellie Goff, retroactive to March 1959.

On January 28, 1971, Mrs. Goff filed a written application for surviving child's insurance benefits and benefits were awarded to James Woolley and Patricia Wooley on April 14, 1971, retroactive to January, 1970. A timely request for reconsideration and application of child's insurance benefits was made for James Woolley and Patricia Woolley from March 1959, child's insurance benefits for Jane (Woolley) Turgeon from March 1959 to May 1969, and mother's insurance benefits for herself from March 1959 to November 1962. On May 9, 1973, Bernard Levine, chief of the reconsideration branch, affirmed the initial determination.

Mrs. Goff appealed the reconsideration determination to the Bureau of Hearings, and a hearing was held on December 19, 1973. On March 11, 1974 the Administrative Law Judge awarded child's insurance benefits to James and Patricia Woolley effective as of March 31, 1959, child's insurance benefits to Jane (Woolley) Turgeon from March 31, 1959 to May, 1969, and mother's insurance benefits to Mrs. Goff from March 31, 1959 to November 1962.

On April 2, 1974, the Appeals Council, on its own Motion, decided to review the Administrative Law Judge's decision. On July 22, 1974, the Appeals Council overruled the decision of the Administrative Law Judge and awarded child's

insurance benefits to James and Patricia Woolley retroactive to January, 1970. On September 11, 1974, Mrs. Goff appealed this decision to the United States District Court for the District of Connecticut. On October 6, 1975, the Court heard argument on Cross-Motions for Summary Judgment and in its ruling date October 17, 1975, the Court granted the Defendant's Motion for Summary Judgment. Judgment was entered accordingly on November 28, 1975.

The Plaintiff's husband, Clayton Woolley, died suddenly in a tragic accident on March 31, 1959. Besides his widow, Nellie T. Goff, he left three children, namely: James Woolley, born February 3, 1953, Patricia Woolley, born October 19, 1955 and Jane (Woolley) Turgeon, born June 1, 1949, married during May 1969. As the wage earner for the family, Clayton Woolley was fully insured under the Social Security Act at the time of his death.

Mrs. Goff sought the advice of her attorney, Bernard Grabowski, relative to eligibility for Social Security Benefits for her and her children. The attorney, and later United States Representative, advised her that neither she nor her children were eligible for Social Security Benefits. He had inquired via telephone to the Social Security Office in New Britain, Connecticut and was advised that since she and her children were receiving Workmen's Compensation Benefits, neither she nor her children were entitled to Social Security Benefits.

Mrs. Goff made no further inquires relative to Social Security Benefits until 1970. Mrs. Goff was told again by her attorney, then former United States Congressman, that she and her children were not eligible for benefits. In 1971, after hearing a public information announcement on the radio, on her own, she learned that she and her children were, in fact, entitled to Social Security Benefits and should have been receiving benefits from March 1959. On January 28, 1971, the Plaintiff filed a written application for surviving child's insurance benefits. Pursuant to that application, benefits were awarded to James Woolley and Patricia Woolley on

April 14, 1971, retroactive to January 1970. Later, for good cause shown, the two year limit for lump sum death benefits was waived and payment was made.

A timely request for reconsideration and an application for child's insurance benefits was made for James Woolley and Patricia Woolley from March 1959, child's insurance benefits for Jane (Woolley) Turgeon from March 1959 to May 1969, and mother's insurance benefits for herself from March 1959 to November 1962, at which time Nellie Goff married her present husband. On May 9, 1973, Bernard Levine, Chief of the Reconsideration Branch, affirmed the initial determination and allowed child's insurance for James and Patricia Wolley retroactive to January 1970, but denied child's insurance benefits to Jane (Woolley) Turgeon and mother's insurance benefits to the Plaintiff.

The Plaintiff appealed the reconsideration determination to the Bureau of Hearings and requested a hearing before an Administrative Law Judge. The hearing was held on December 19, 1973. Attorney Grabowski informed Judge Bennett in a letter addressed to him dated January 3, 1974, that he did, in fact, contact the Social Security Office in New Britian, Connecticut to inquire as to the eligibility of the Plaintiff and her children for Social Security Benefits. On March 11, 1974, the Administrative Law Judge filed his decision giving benefits. He awarded child's insurance benefits to James and Patricia Woolley effective as of March 31, 1959 and child's insurance benefits to Jane (Woolley) Turgeon from March 31, 1959 to May 1969, and mother's insurance benefits were allowed to the Plaintiff from March 31, 1959 to November 1962.

The Appeals Council, on its own Motion, on April 2, 1974, notified the Plaintiff of its decision to review the Administrative Law Judge's decision. On July 22, 1974, after a hearing had been held, the Appeals Council overruled the decision of the Administrative Law Judge and awarded child's insurance benefits to only James and Patricia

Woolley retroactive to January 1970. From that decision the Plaintiff appealed to the United States District Court for the District of Connecticut on September 11, 1974. On October 6, 1975, argument was heard on Cross-Motions for Summary Judgment, and in its ruling dated October 17, 1975, the Court granted the Defendant's Motion for Summary Judgment, and Judgment was entered accordingly on November 28, 1975.

On December 30, 1975 the Petitioner filed a timely Notice of Appeal from the judgment with the United States Court of Appeals for the Second Circuit. On May 4, 1976, oral arguments were made by both parties before the United States Court of Appeals for the Second Circuit. On May 4, 1976, United States Court of Appeals for the Second Circuit affirmed the judgment of the United States District Court.

REASON FOR GRANTING THE WRIT

A

The Court of Appeals has decided a federal question which conflicts with another Court of Appeals.

The instant decision holds that failure to satisfy the technicality of a written application prevents a claimant from securing Social Security benefits. This is in conflict with the decision in Tuck v. Finch, 430 Fed. 2d 175 (4 Cir., 1970). The instant claim is not based merely on the self-serving statement of the Petitioner alone, but is fully corroborated and substantiated by the letter and affidavit of Attorney Grabowski. The corroboration along with the circumstances, bring the present case within the holding of Tuck.

In **Tuck** the Court found that the use of a written application form is not mandatory and its absence does not conclusively establish that an application was not made. Although the case involved an application for disability

under 205 (c) (5) (A), 42 USC 405(c) (5) (A) rather than entitlement under Sections 202(d) and 202(g) of the Act, 42 USC 402(d), 402 (g), the principles of construction in **Tuck** are applicable in the present case. The question in Tuck was whether an unwritten, informal application satisfied the Statute. The court held that the oral request for benefits was an application for monthly benefits. The court said on page 1077 as follows:

> "The Secretary has prescribed application forms for disability insurance benefits. 20 C.F.R. 422.501 and .505. Ordinarily an application made on the form will conclusively establish the date it was filed. Use of a form, however, does not appear to be mandatory, and its absence does not conclusively establish that an application was made, especially when the Applicant is illiterate. Here the Secretary's own records affirmatively show that in February 1965, Tuck "asked about receiving Social Security Benefits" and that an official of the Social Security Administration discussed his application with him. While a written application might be expected from a literate person, an illiterate often can do little other than make an oral request to the official to whom he has been referred."

The Court in **Tuck** was considerng the case of **Roy v. Gardner**, 387 F. 2d 162, wherein there had been a finding that a claim for disability benefits had not been filed. In the **Roy** case the Court pointed out that there was unsubstantiated testimony of the Claimant. The court stated:

> "The fact that no such claim was to be found in the records of the Social Security Administration and that there was no notation of the receipt or filing of any such claim, if not conclusive, furnish substantial evidence in support of the finding. The fact finder was not bound to accept the self-serving testimony of the Claimant and his wife, otherwise unsubstantiated, to the contrary."

The Court in Tuck distinguished the Roy case by stating that in Tuck the Secretary' records corroborated Tuck's claim. Therefore, corroboration of the Claimant's oral inquiry in Tuck was the rationale for the Court holding. In Tuck the corroboration was accidentally a written record of the Claimant's oral inquiry made by a Social Security employee. In the present case, the Claimant's oral inquiry is meaningfully corroborated by Attorney Grabowski. By correspondence and by signed Affidavit, he vividly attests to the fact that he did make an oral inquiry at the New Britian, Connecticut Social Security Office on behalf of the Claimant.

B.

The Court of Appeals has decided an important question of federal law which has not been, but should be settled by this Court.

The instant decision has far reaching consequences which will affect a substantial number of persons in the future. The decision of the Court of Appeals involves the very essence of the broad purpose of the Social Security Act. It clearly appears that the broad purpose of the Social Security Act requires a liberal interpretation of its provisions. To achieve the social objectives and goals of the Social Security Act, the Court should not be technical or restrictive. The provisions should be liberally applied in favor of coverage. Rasmussen v. Gardner, 374 Fed 2d 589 (10 Cir. 1967); Dvorak v. Celebrezze, 345 Fed 2d 894 (10 Cir, 1965); Haberman v. Finch, 418 Fed 2nd 664 (2 Cir. 1969).

This decision is a significant departure from the aforementioned principles and philosophy. If permitted to stand, it may have a serious financial impact on present and future Social Security claimants.

It is appropriate and necessary that this Court review the case at bar so that the uncertainty of the interpretation and application of the Social Security Act may be resolved.

Additionally, this decision involves important public policy considerations which have not been, but should be decided and enunciated by this Court.

CONCLUSION

It is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED,

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